IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 2:16cr119
	)	
	)	
ROBERT LEE PETTY	)	
Defendant.	)	

POSITION WITH RESPECT TO SENTENCING FACTORS

COMES NOW the defendant, Robert Lee Petty, by counsel, in accordance with Rule 32 of the Federal Rules of Criminal Procedure, Section 6A1.2 of the *Sentencing Guidelines and Policy Statements* as well as this Court's Sentencing Procedure Order, and hereby represents that he has reviewed the United States Probation Officer's Presentence Investigation Report and he has no objection to the Report. Accordingly, he respectfully states his position with respect to the sentencing factors.

Procedural Background

Mr. Petty is before this Honorable Court for sentencing after entering a guilty plea on September 1, 2016, in accordance with the terms of a written Plea Agreement, to Count 1 of the Criminal Information, to wit: Production of Images of Minors Engaging in Sexually Explicit Conduction, in violation of 18 U.S.C. §2251(a). His sentencing hearing is set for Monday, February 6, 2017, at 2:30 p.m.

The Requested Sentence

I. Overview of Sentencing Request

Mr. Petty has been recently diagnosed with Post Traumatic Stress Disorder and is in need of counseling, supervision, and treatment. A sentence of one hundred eighty months would promote respect for the law and adequately reflect the seriousness of his offense while also allowing him to get treatment and begin the rehabilitation process.

THE APPROPRIATE SENTENCE IN THIS CASE

It is now well understood that the sentencing guidelines are advisory, and district courts are vested with authority to depart or vary from a suggested range in order to achieve the goal of arriving at a sentence that is “sufficient, but not greater than necessary,” to comply with the four purposes of sentencing set forth in 18 U.S.C. §3553(a)(2): retribution (to reflect the seriousness of the offense, to promote respect for the law, and to provide “just punishment), deterrence, incapacitation (“to protect the public from further crimes”), and rehabilitation (“to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner”). The sufficient-but-not-greater-than-necessary requirement is often referred to as the “parsimony provision.” This requirement is not just another factor to be considered along with the others set forth in 18 U.S.C. §3553(a)—it sets an independent limit on the sentence.

Accordingly, Congress has required federal courts to impose the least amount of imprisonment necessary to accomplish the purpose of sentencing. The Court is to consider (a) the nature and circumstances of the offense and the history and characteristics of the defendant; (b) the kinds of sentences available; (c) the guideline range; (d) the need to avoid unwarranted sentencing disparities; and (e) the need for restitution.

II. Nature and Circumstances of the Offense

The stipulated Statement of Facts authored in paragraph eight of the Presentence Investigation Report sufficiently sets forth the offense conduct in support of Mr. Petty's guilty plea. Mr. Petty immediately pleaded guilty pre-indictment and has accepted responsibility for his criminal behavior.

III. Robert's History & Characteristics:

A. Childhood and Early Adulthood

Robert was born to the marital union of his mother and father who eventually separated and divorced when Robert was just a toddler. He and his older sister remained with his mother and she served as the primary care giver during their early childhood years. Robert only had sporadic contact with his father, who moved to South Carolina after the divorce was finalized. Shockingly, after the divorce, when Robert and his sister were just young children, they were kidnapped by their biological father; their whereabouts unknown for approximately six months until his mother hired a private investigator who ultimately located the children in South Carolina. After the kidnapping ordeal, Robert and his sister were reunited with their mother in Virginia. (PSR, P. 11, ¶ ¶45 and 46)

Despite this incredibly traumatic event, Robert enjoyed a stable and loving upbringing after his mother married her second husband, John Midgett. In John, Robert found the role model and mentor that he had so desperately wanted in his biological father. John was a strong and stable figure in Robert's life; loving him as if he were his own child. In contrast to Robert's biological father, who failed to even pay child support, John provided stability, financial security and a loving environment in which to live. Other than the painful and horrific experience of being kidnapped by his own father, Robert did not suffer any abuse at the hands of his mother or step-father. Although in John he had a loving and nurturing step-parent, Robert longed to have a relationship with his biological father, who never became a part of Robert's life.

Robert's mother and step-father had a son, who was born with tuberous sclerosis – a rare genetic disease that causes non-cancerous tumors – and has a severe intellectual disability. Currently, this brother, who is thirty-nine years of age, resides in an assisted living facility, so that his disability needs are fully met. When Robert was growing up, he was a tremendous source of help to his mother and step-father with his younger brother. (PSR, P. 11, ¶46) In the character letter that she authored to the Court, his mother indicates that "Robert was very helpful and loving to his younger brother who suffers from Tuberous Sclerosis Complex . . ." Robert was especially needed, and more importantly helped me with his disabled brother, when his stepdad was deployed overseas on a U.S. Navy ship." (*See* Defendant's Exhibit A)

In the character letter authored by his step-father, John describes Robert as an "extremely happy child" and indicated that Robert "thrived on the attention that he received" from his parents. John also describes in detail Robert's invaluable help in assisting with and caring for his severely disabled, younger brother. (*See* Defendant's Exhibit B)

Although he was not the most popular person in school, Robert enjoyed a small, close-knit circle of friends. He was gifted musically, playing the trumpet and participating in various school bands, and was even asked to perform a solo of the National Anthem at a Salem high school football game; which he did flawlessly. *Id.* His mother characterized Robert as a "sweet child, but also a sad child." In her character letter to the court, his mother authors that "[a]s a small child, Robert possessed a sensitivity and kindness in his nature. He was a sweet, loving boy, eager to please and help in any way possible." (*See* Defendant's Exhibit A)

In her character letter to the Court, his sister Wendy describes Robert as the "most caring and thoughtful person." She details that when she was younger and terrified of thunderstorms, Robert would sleep on her floor, without hesitation or reservation, to make her feel safe in the wake of her fears and apprehension. (*See* Defendant's Exhibit E)

While attending high school, Robert also worked part-time at U-Haul. After successfully graduating from high school, Robert enlisted in the United States Navy and was an active member of the service from 1992 until 1996. As a member of the United States Navy, Robert worked as a missile technician on a submarine and attained the rank of E4. Robert suffered minor setbacks in the Navy, after being convicted of a Driving Under the Influence charge and missing a required paintball exercise, he was demoted to the rank of E1. He eventually received a General Under Honorable Conditions Discharge. (PSR, ¶58).

B. Employment

Robert has been gainfully employed with U-Haul since his discharge from the Navy until his arrest for the instant offense; over two decades of gainful and stable employment with the same tax-reporting, legitimate company. He has held various positions at U-Haul, with the latest being shop manager at a local location in Norfolk, Virginia. His shop manager duties included inventory control, personnel management, equipment management, and storage management. (PSR, P. 14, ¶57).

In his step-father's character letter, John describes Robert's work ethic, leadership and customer service skills as "outstanding" and indicates that as a result of these qualities, Robert received numerous recognition awards during his tenure with the company, including an award for twenty years of service. Additionally, longtime friend and fellow co-worker, Roland Tate, writes in his character letter that he has had the honor and privilege of knowing Robert for the past eight years. Robert has been an important "mentor" to Roland and describes him as an extremely "generous" individual who was held in high regard within the company ranks. (*See* Defendant's Exhibits B and H respectively).

C. Life Changing and Traumatic Event in Robert's Life

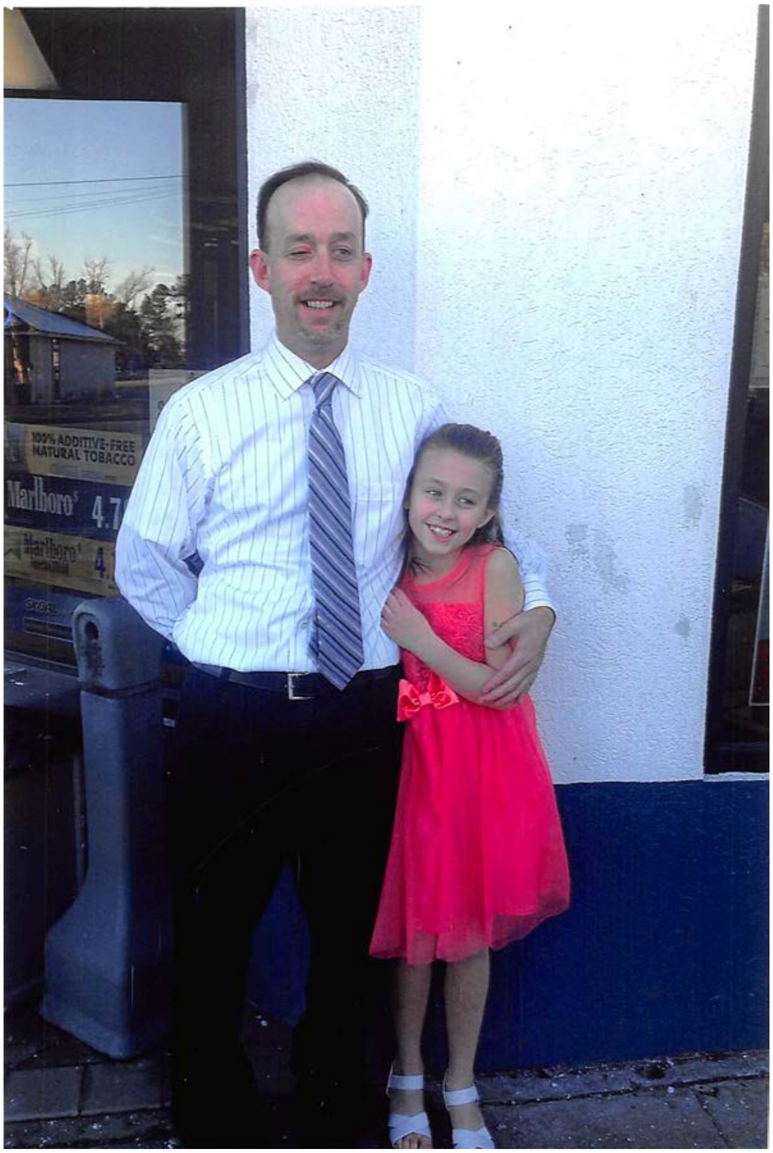
Although U-Haul provided Robert and his family with financial stability and growth, there was an enormously traumatic, life-changing event that has had a lasting and significant impact on Robert. In 1998, while working as a manager for U-Haul in Washington, Robert was preparing the store for closing when he was approached by a man, Charles Bell, Jr., and was forced into a dimly lit room at gunpoint. Mr. Bell fired his weapon toward Robert three times; one shot went through his left hand into his skull, another in his shoulder and a third bullet missed Robert completely. Mr. Bell was charged with attempted murder in the first degree and robbery in the first degree. (*See* PSR, P. 13, ¶50) Mr. Bell was convicted and sentenced to serve 320.25 months plus 114 months (concurrently) of incarceration for the attempted murder and attempted robbery of Robert and was ordered to have no contact with Robert of his family. (*See* Defendant's Exhibit I) To this day, Robert still has bullet fragments lodged in his left shoulder and medical documentation corroborates this fact. (*See* Defendant's Exhibit J)

Unfortunately, after the trauma associated with being robbed and almost killed, Robert did not seek any form of treatment or therapy to deal with the horrific nightmare of being shot. Unfortunately, Robert also had to further relive the traumatic event by coming face to face with the man that tried to murder him when he testified against him at trial. Robert's ex-wife, Sharron Petty, describes for the Court the "roller coaster" that their world became after Robert was shot and suffered through the agonizing trial. She writes that "Robert consistently had nightmares and flashbacks from this horrible event . . . he seemed to be paranoid . . ." This traumatic event had a seriously negative impact on the young family. Because of his debilitating injuries and the trauma associated with almost being killed, Robert was unable to work for a significant period of time and the family lost everything, including their home, as a result of his inability to work. As a result of this life changing event, Robert and his young family relocated back to Virginia to be closer to Robert's parents. (*See* Defendant's Exhibit C)

In his character letter to the Court, Robert's step-father acknowledges the life changing event and details the harrowing facts with which Robert was faced as he was shot at close range by his attacker. "The assailant was a former UHAUL employee that Robert recognized. The assailant had Robert lay on the floor of the storage unit at which time he fired a shot that penetrated Robert's hand and the bullet lodged in Robert's skull. The assailant left and closed the storage unit pull down door behind him leaving Robert bleeding on the floor." (*See* Defendant's Exhibit B). Robert's step-father further details the devastation that plagued the family after Robert was nearly killed. "This ordeal had a huge impact on Robert and his family, both emotionally and financially and resulted in Robert and Sherry filing bankruptcy." *Id.*

D. Robert: His Role as a Father

Robert is the father of three biological children. These children dearly adore Robert and he has repeatedly been described as a family man who put his family's needs "above his own. He has timely and faithfully paid child support payments to his ex-wife Sharron Petty for his two girls . . ." He has also provided them with medical insurance and would take the children to their medical and dental appointments." Robert attended school functions including chorus recitals and a daddy/daughter dance with his youngest daughter . . . It was always Robert that attended the parent-teacher conferences and it was always Robert that helped with homework should the children need, or asked for help." (*See* Defendant's Exhibit A)



In his character letter to the Court, Robert's step-father describes Robert as a "bright, caring, devoted father and son who will be sorely missed by his children, and by his parents." (*See* Defendant's Exhibit B)

In her character letter to the Court, his ex-wife, Sharron Petty, describes Robert as a "decent man and a loving father." She further indicates that "Robert has always been there for his daughters, no matter what. He has never been late on his child support payments, or missed visitation with the girls. He has gone over and above what he had to do for his daughters. He took them to dentist appointments, doctor appointments and always attended the girl's school functions." (*See* Defendant's Exhibit C).

One of the most poignant and moving character letters that was submitted on behalf of Robert was authored by his eighteen year old daughter. She writes that "Robert Petty is my father, and my best friend. He has never failed to help whenever and however he can, and he has never let me fall. He's my rock, my support group and he is the strongest man I know, not physically, but emotionally." She concludes her character letter with "[m]y dad is not only my hero, but the whole family thrives on him. He is the glue that holds us all together and the light that we all love to let shine." (*See* Defendant's Exhibit D)

Wendy Mink, Robert's older sister describes Robert as a "wonderful, loving Father to my Nieces, and my Nephew. He ensured child support was paid. He provided their medical, dental and vision insurance. He made most, if not all appointments and took time off of work to take them." She further writes that Robert has been a wonderful and loving uncle to her daughter. (*See* Defendant's Exhibit E)

In her character letter to the Court, Wendy's daughter, Robert's niece, writes that Robert "has always treated me as if I were his own child, and has also been one of the only father figures I have had, as I do not have a real relationship with my father." She further described that Robert has never forgotten her birthday and has always been there for her. (*See* Defendant's Exhibit F).

E. Robert's Forensic Mental Health Evaluation – Dr. DeRight

Dr. Jonathan DeRight, PH.D., of Woodbridge Psychological Associates, P.C., conducted a forensic mental health evaluation of Mr. Petty at the request of the Federal Public Defender's Office. Dr. DeRight has prepared a thirteen page report setting forth his methods and opinions. Dr. DeRight's report—which contains sensitive information related to Mr. Petty's mental health—will be submitted separately under seal.

On December 1, 2016, over the course of seven and one half hours, Robert met with Dr. DeRight, who is a clinical and Forensic Neuropsychologist. During that time, Dr. DeRight conducted an extended clinical interview, and administered the following standardized psychological tests: *Weschler Adult Intelligence Scale, Fourth Edition (WAIS-IV); Green's Word Memory Test (WMT); Reliable Digit Span (RDS), Language of the Eyes (Faces Test); Adult Asperger Assessment (AAA); Rorschach Inkblot Test, Personality Assessment Inventory (PAI); and Trauma Symptom Inventory, Second Edition (TSI-2,* to evaluate Mr. Petty.

According to Dr. DeRight's report, "[m]easures of Mr. Petty's mood and personality suggest that prominent symptoms of posttraumatic stress and a strong preoccupation with control." (DeRight report, P. 8) Further testing showed that "Mr. Petty's responses were also characteristic of a significant preoccupation with control. He is likely to be viewed by others as domineering or over-controlling; he has a strong need to control others and has an expectation of respect and admiration in return." (DeRight report, P. 8)

Additional testing revealed that "Mr. Petty clearly meets criteria for Posttraumatic Stress Disorder (PTSD) according to the DSM-5." (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition) (DeRight report, P. 9) "Being the victim of a robbery and attempted murder, he directly experienced a traumatic event and was exposed to threatened death. As a result, he has current, involuntary, and intrusive distressing memories of the event along with psychological and physiological signs of distress when exposed to reminders of the trauma." (DeRight report, P. 9)

Dr. DeRight concludes that "based upon multiple sources of information including neuropsychological testing, clinical interview, and record review, to a reasonable degree of neuropsychological certainty, Mr. Petty is appropriately diagnosed with Posttraumatic Stress

Disorder." (DeRight report, P. 9) "Personality testing also revealed a premorbid personality marked by dominance and a need for control with the expectation of admiration in return." (DeRight report, P. 10) Finally, Mr. Petty "has been said to be 'controlling' by his ex-girlfriend . . . and explicitly reported feeling a lack of control in their relationship at the time of the instant offense. Thus, it is possible that unresolved symptoms of PTSD contributed to exacerbation of his premorbid personality." (DeRight report, P. 10)

Dr. DeRight acknowledges that "[t]his interaction was likely to be part of the psychiatric and motivational context in which the instant offense occurred, but would not fully explain his continued involvement in such activities." (DeRight report, P. 10) In light of his observations and opinions, Dr. DeRight recommends that Mr. Petty undergo "Cognitive Processing Therapy, or another evidence-based psychotherapy for PTSD." Dr. DeRight believes that the "symptoms that he is experiencing are unlikely to be well-treated by medication, at least on its own, and psychotherapy will be a more appropriate avenue for treatment of PTSD." (DeRight report, P. 10)

Reflecting The Seriousness Of The Offense, Promoting Respect For The Law, Providing Just Punishment, Deterrence & Protecting The Public From Mr. Petty

Retribution:

Mr. Petty is fully aware that this Honorable Court must consider the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide "just punishment." 18 U.S.C. 3353(a). With that in mind, Mr. Petty respectfully submits that a sentence of one hundred eighty months achieves these goals as said sentence is punitive in nature and addresses the seriousness of his criminal conduct.

Deterrence:

A sentence of one hundred eighty months is sufficient to achieve deterrence. Research indicates that increases in the *severity* of punishment are far less important to producing deterrent effects than the *certainty* of punishment (if severity is relevant at all). *See* Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*, 1. Indeed, virtually no empirical data suggests that harsher (more lengthy) sentences achieve better general deterrence than moderate sentences. After reviewing the available evidence on whether harsher sentences deter, Professor Doob asked and answered the following question:

> Can we conclude that variation in the severity of sentences would have differential (general) deterrent effects? Our reply is a resounding no. We could find no conclusive evidence that supports the hypothesis that harsher sentences reduce crime through the mechanism of general deterrence. Particularly given the significant body of literature from which this conclusion is based, the consistency of the findings over time and space, and the multiple measures and methods employed in the research conducted, we would suggest that a stronger conclusion is warranted. More specifically, the null hypothesis that variation in sentence severity does not cause variation in crime rates should be conditionally accepted.

Anthony N. Doob & Cheryl Marie Webster, *Sentence Severity and Crime: Accepting the Null Hypothesis*, 30 Crime & Just. 143, 187 (2003). Indeed, "[t]he findings regarding general deterrence are relatively settled":

> The existing data show that in the absence of the threat of punishment for criminal conduct, the social fabric of society would readily dissipate; crime would escalate and overwhelmingly frustrate the capacity of people to lead happy and fulfilled lives. Thus, general deterrence works in the absolute sense: there is *a connection* between criminal sanctions and criminal conduct. However, there is insufficient evidence to support a direct correlation between higher penalties and a reduction in the crime rate.… It is counter-intuitive to suggest that higher penalties will not reduce the crime rate. However, the evidence is relatively definitive.

Mirko Bagaric, *A Rational Theory of Mitigation and Aggravation in Sentencing: Why Less Is More When It Comes to Punishing Criminals*, 62 Buff. L. Rev. 1159, 1202-03 (2014) (footnotes omitted). In sum, "studies repeatedly show that awareness of potentially severe sanctions does not produce less crime." *Id.*, at 1203. So general deterrence "does not require a particularly burdensome penalty, merely one that people would seek to avoid," which "could be satisfied by a fine or a short prison term." *Id.* at 1205.

Incapacitation:

Mr. Petty is also fully aware that the sentence imposed must take into account the need to protect the public from further crimes of Mr. Petty. As far as his prior criminal record is concerned, Mr. Petty has one prior misdemeanor conviction for Driving Under the Influence. He has never served an active period of incarceration prior to his arrest on the instant offense. He respectfully submits that in light of the lengthy period of incarceration with which he is facing and his removal from the public for this significant and lengthy period of time, the public shall be protected from any further crimes of Mr. Petty. Additionally, Mr. Petty will be on a lengthy period of Supervised Release with the United States Probation Office after he is released from custody and he will be required to register as a convicted sex offender.

Rehabilitation:

Mr. Petty fully understands the need for the sentence imposed to provide him with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. With that understanding in mind, Mr. Petty is anxious and fully prepared to take full advantage of every rehabilitative opportunity afforded to him while in custody, to include substance abuse treatment, mental health programming and sex offender treatment.

CONCLUSION

Giving full consideration to the facts and argument above, Mr. Petty respectfully requests that this Honorable Court impose a sentence of one hundred eighty months. Any sentence in excess of one hundred eighty months would be greater than necessary to achieve the policy purposes of sentencing.

Respectfully submitted:

ROBERT LEE PETTY

By:____________/s/____________
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CERTIFICATE OF SERVICE

I certify that on this 25th day of January 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

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I also certify that I have electronically mailed this document to the following non-filing user:

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